Supreme Court, U.S.
FILED

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DOCKET NO: _____

In The
SUPREME COURT of the UNITED STATES

IRA W. SCOTT,
Petitioner,

v.

STATE OF INDIANA,
Respondent.

On Petition For A Writ Of Certiorari
To The Washington Supreme Court

Ira W. Scott
Petitioner
407 Center Street
Valparaiso, IN 46385
(888) 273-4152
Pro Se

69 pp

QUESTIONS PRESENTED

It was discovered after the fact that the Attorney General of Indiana argued outside of the record on direct appeal to the Third District Court of Appeals of Indiana and in response to a Writ of Habeas Corpus Petition filed in the Seventh District Court for Northern Indiana, Hammond Division.

1. Should an Attorney General be allowed to argue outside of the record in any appeal proceeding?

2. Should the Court weigh Petitioner's relative lack of experience in legal matters, in untimely filling a Petition for Rehearing in the Seventh District Court of Appeals for Northern District of Indiana, Hammond Division; and in timely filing an appeal in the wrong Court against repeated instance of the Attorney General of the State of Indiana arguing outside of the record?

LIST OF PARTIES

Pursuant to Rule 14.1(b), the following list identifies all of the parties to the proceeding in the Washington Supreme Court, whose judgment is sought to be reviewed.

Appellants below:

Ira W. Scott

Respondent below:

Attorney General of the State of Indiana

TABLE OF CONTENTS

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISION INVOLVED .. 1

STATEMENT 2

PROCEEDINGS BELOW 3

REASONS FOR GRANTING PETITION 4

CONCLUSION 5

TABLE OF AUTHORITIES

CASES

Note to the Examiner of this Document:

After a diligent search utilizing West's Federal Reporter Editorial Staff Attorney, the result was that no similar case law could be found pertinent to this Writ of Certiorari. The search covered a Federal Jurisdiction and Supreme Court decisions.

PETITION FOR WRIT OF CERTIORARI

Petitioner Ira W. Scott respectfully requests this Court to issue a writ of certiorari to review the Judgment Order of the U.S. Seventh Circuit Court of Appeals, Chicago, Illinois, dismissing appeal for lack of jurisdiction.

OPINIONS BELOW

The Court of Appeals issued judgment on May 22, 2000, without issuing an opinion in this case. (See Appendix A)

JURISDICTION

The Seventh Circuit Court of Appeals, Chicago, Illinois, Order of the Court given December 21, 2000.

CONSTITUTIONAL PROVISION INVOLVED

The last sentence of the First Amendment of the United States Constitution states, "...and to petition the government for a redress of grievances." Amendment Fourteen, Section One: "No State shall ... deprive any person of life, liberty or property without due process of law."

STATEMENT

On or about May 4, 2000, a Petition for Rehearing of Writ of Habeas Corpus Petition was filed in the Seventh District Court for Northern Indiana, Hammond Division. (See Appendix B) The Petition alleged that the decisions reached adverse to Petitioner in the February 6, 1996, Return to Order to Show Cause under case number 2:96-CB-0001-AS and Memorandum in Support of Return to Order to Show Cause were due to information supplied by the Attorney General of Indiana that were outside the record.

The Seventh District Court of Appeals for Northern District of Indiana Hammond Division issued judgment on Petition for rehearing on May 22, 2000, without issuing an opinion. (See Appendix A)

On or about August 9, 2000, a writ of certiorari was filed with the United States Supreme Court.

On or about August 10, 2000, the Office of the Clerk of the Supreme Court informed Petitioner that this "case must first be reviewed by a United States Court of Appeals or by the highest State Court in which a decision could be had. 28USC1254 and 1257." (See Appendix C)

In a Jurisdictional Memorandum filed on or about December 11, 2000, Petitioner explained the time delay in filing a Notice of Appeal on August 22, 2000 (see Appendix D) from an Order issued by the United States Seventh District Court on May 22, 2000. (See Appendix A)

On December 21, 2000, an Order was issued from the United States Court of Appeals for the Seventh Circuit, Chicago, Illinois. (See Appendix E) The Order cited lack of jurisdiction for reason for dismissal.

For the sake of uniformity, consistency, and brevity, if this would be consistent with the discretion of the Court, Petitioner would request to present the same grounds numbers 36, 54, and 55 regarding the Attorney General of Indiana arguing outside the record as presented in a Post-Conviction Relief Petition filed in the Porter Superior Court, sitting in Valparaiso, Indiana, on December 17, 1997, under cause number 64D01-8805-CF-76B, to show this documentation in its original verbage (less grounds numbers), Petitioner requests it to be viewed as Appendix F to this Writ of Certiorari.

PROCEEDINGS BELOW

On December 17, 1997, a Petition for Post-Conviction Relief was filed in the Porter Superior Court, Valparaiso, Indiana, under cause number 64D01-8805-CF-76B in part because of the discovery that the court record did not conform to some of the informations supplied by the Attorney General of Indiana to the Third Court of Appeals of Indiana and the Seventh District Court, Northern District of Indiana, Hammond Division.

As of the filing of this petition for a writ of certiorari, the Porter Superior Court, Valparaiso, Indiana, has not ruled on the subject matters listed in Appendix F. The lack of a timely ruling for the matters set forth in the above mention Post-Conviction Relief Petition prompted

Petitioner to seek remedy in the Seventh District United States Court, Northern District of Indiana, Hammond Division, on or about May 4, 2000, for the stated reasons set forth in Appendix F.

REASONS FOR GRANTING PETITION

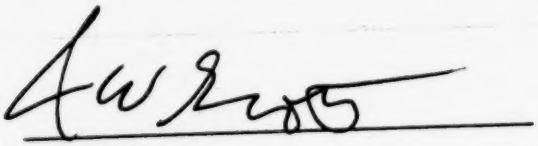
The Petitioner feels this matter is of imperative public importance because arguing outside the record would tend to mislead the Court of decision to the disadvantage of the Petitioner and tend to degrade the Office of the Attorney General of Indiana, which should be a "higher and better source" to correspond with the Third District Court of Appeals of Indiana and the Seventh United States District Court, Northern District of Indiana Division, Hammond, Indiana. The public should not be served by an Attorney General's office that would place arguments outside of the Court record in order to keep an wrongful conviction in place.

Further, the Court should weigh Petitioner's lack of experience in legal matters in timely filing an appeal in the wrong court against the repeated instances of the Attorney General of the State of Indiana arguing outside the record.

CONCLUSION

The petition for a writ of certiorari should be granted for reasons hereinabove stated or any and all other as found by this Court.

Respectfully submitted,



Ira W. Scott
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Appendix A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IRA SCOTT,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil No. 2:96CV0001AS
	)	
INDIANA ATTORNEY GENERAL,	)	
	)	
	)	
Respondent.	)	

ORDER

This case was closed four years ago. The filing by this petitoner on May 4 2000 is completely out of time and is ordered **STRICKEN.**

SO ORDERED.

DATED: May 22, 2000. /s/ Allen Sharp, Judge
ALLEN SHARP, JUDGE
UNITED STATES
DISTRICT COURT

cc. Aungst
Indiana Attorney General

Appendix B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IRA W. SCOTT, Petitioner,	)	
vs.	)	CAUSE NO: 2:96-CV-0001-AS
INDIANA ATTORNEY GENERAL, Respondent.	)	

PETITION FOR REHEARING OF
WRIT OF HABEAS CORPUS PETITION

A Petition for Rehearing is being requested by Petitioner as a result of a document filed in Federal Court on or about February 6, 1996, known as Return to Order to Show Cause under cause number 2:96-CB-0001-AS, and a document known as Memorandum in Support of Return to Order to Show Cause under cause number 2:96-CV-0001-AS, filed on or about February 6, 1996.

Petitioner advises the Court that he, as Petitioner, has not alleged that the Attorney General of Indiana knowingly or intentionally argued in Federal Court outside the record; instead Petitioner had only compared the trial court record with information provided to the Court in this matter by the Attorney General of Indiana.

For the sake of uniformity, consistency, and brevity, if this would be consistent with the discretion of

the Court, Petitioner would like to present the same grounds numbers 36, 54, and 55 regarding the Attorney General of Indiana arguing outside the record, as presented in a Post-Conviction Relief Petition filed in the Porter Superior Court, sitting in Valparaiso, Indiana, on December 17, 1997, under cause number 64D01-8805-CF-76B. To show this documentation in its original form, Petitioner requests it be viewed as Exhibit A to this Petition.

There are other issues Petitioner would like to bring to the Court's attention concerning the Writ of Habeas Corpus Petition, under cause number 2:96-CV-0001-AS. Presently Petitioner, due to his limited legal knowledge and experience, will await this Honorable Court's ruling and/or decision for the allowance of a new Writ of Habeas Corpus Petition, pending a ruling on this current Petition.

Respectfully submitted,

/s/ Ira W. Scott
Ira W. Scott, Petitioner
Pro Se

Appendix C

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

William K Suter
Clerk of the Court

Area Code 202
479-3011

August 10, 2000

Ira W. Scott
407 Center Street
Valparaiso, IN 46385

RE: Ira W. Scott v. Indiana

Dear Mr. Scott:

The above-entitled petition for a writ of certiorarai was postmarked August 1, 2000 and received August 9, 2000. The papers are returned for the following reason(s):

Your case must first be reviewed by a United States court of appeals or by the highest state court in which a decision could be had. 28 USC 1254 and 1257.

Enclosed also is your check #1261 in the amount of $300.00 in addition to 40 copies of your petition.

Sincerely,
William K. Suter, Clerk
By:
S. Elliott
(202) 479-3025

Enclosures

Appendix D

NOTICE OF APPEAL TO THE SEVENTH CIRCUIT COURT OF APPEALS FROM AN ORDER OF THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF INDIANA, HAMMOND DIVISION

FILE #: 2:96CV0001AS

IRA W. SCOTT, Petitioner	)	
	)	**NOTICE**
vs.	)	**OF**
	)	**APPEAL**
ATTORNEY GENERAL	)	
OF INDIANA, Respondent.	)	

NOTICE is hereby given that Ira W. Scott, Petitioner, making a pro se appearance in the above-named case, hereby appeals to the United States Court of Appeals for the Seventh Circuit from an Order issued on May 22, 2000, in the United States Seventh District Court, Northern District of Indiana, Hammond Division and from a Remand Notice issued on August 10, 2000, by the Clerk of the Supreme Court of the United States citing 28 USC 1254 and 1257.

/s/ Ira W. Scott
Ira W. Scott, Petitioner Pro Se
407 Center Street
Valparaiso, IN 46385-4504
Ph. #: (888) 273-4152

Appendix D

DOCKET NO:_____

IN THE UNITED STATES COURT OF APPEALS

SEVENTH CIRCUIT

IRA W. SCOTT, Petitioner	)	
	)	**DOCKETING**
V.	)	**STATEMENT**
	)	
ATTORNEY GENERAL	)	
OF INDIANA, Respondent.	)	

JURISDICTION

The Seventh District Court of Appeals, Northern District of Indiana, Hammond Division.

STATEMENT

On or about May 4, 2000, a Petition for Rehearing of Writ of Habeas Corpus Petition was filed in the Seventh District Court of Northern Indiana, Hammond Division. The Petition alleged that the decisions reached adverse to Petitioner in the February 6, 1996, Return to Order to Show Cause under case number 2:96-CB-0001-AS and Memorandum in Support of Return to Order to Show Cause were due to information supplied by the Attorney General of Indiana that were outside the record.

For the sake of uniformity, consistency, and brevity, if this would be consistent with the discretion of

the Court, Petitioner would request to present the same grounds numbers 36, 54, and 55 regarding the Attorney General of Indiana arguing outside the record as presented in a Post-Conviction Relief Petition filed in the Porter Superior Court, sitting in Valparaiso, Indiana, on December 17, 1997, under cause number 64D01-8805-CF-76B.

PROCEEDINGS BELOW

On December 17, 1997, a Petition for Post-Conviction Relief was filed in the Porter Superior Court, Valparaiso, Indiana, under cause number 64D01-8805-CF-76B in part because of the discovery that the court record did not conform to some of the informations supplied by the Attorney General of Indiana to the Third Court of Appeals of Indiana and the United States Seventh District Court, Northern District of Indiana, Hammond Division.

As of the filing of this Docketing Statement, the Porter Superior Court, Valparaiso, Indiana, has not ruled on the subject matters listed above. The lack of a timely ruling for the matters set forth in the above mention Post-Conviction Relief Petition prompted Petitioner to seek remedy in the Seventh District United States Court, Northern District of Indiana, Hammond Division, on or about May 4, 2000, for the stated reasons set forth in the Petition for Rehearing in this matter.

REASONS FOR GRANTING A NEW APPEAL

The Petitioner feels this matter is of imperative public importance because arguing outside the record would tend to mislead the Court of decision to the disadvantage of the Petitioner and tend to degrade the Office of the Attorney General of Indiana, which should be a "higher and better source" to correspond with the Third District Court of Appeals of Indiana and the Seventh United States District Court, Northern District of Indiana Division, Hammond, Indiana. The public should not be served by an Attorney General's office that would place arguments outside of the Court record in order to keep a wrongful conviction in place.

CUSTODY OF PETITIONER

Petitioner is currently in the custody of the Porter County Adult Probation Department, Valparaiso, Indiana.

Respectfully submitted,

/s/ Ira W. Scott
Ira W. Scott
Petitioner, Pro Se
407 Center Street
Valparaiso, IN 46385
Business Phone: (888) 273-4152

Appendix D

DOCKET NO:_____

IN THE UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT
CHICAGO, IL 60604

IRA W. SCOTT,	) **NO. 004084**
Petitioner/Appellant ,	) **APPEAL FROM THE**
	) **UNITED STATES**
vs.	) **DISTRICT COURT FOR**
	) **THE NORTHERN**
EDWARD L. COHN,	) **DISTRICT OF**
COMMISSIONER,	) **INDIANA HAMMOND**
Respondent/Appellee,	) **DIVISION**
	NO. 96C1
	ALLEN SHARP, JUDGE

JURISDICTIONAL MEMORANDUM

Appeal to the Seventh Circuit Court was delayed because of a filling by the U.S. Supreme Court propagated by the misunderstanding of Petitioner. When it was revealed by the Clerk of the Supreme Court to file petition with the Seventh Circuit Court in Chicago, Illinois, it was filed on August 22, 2000. In consideration that the appeal to the Supreme Court of the United States was accomplished in a timely and statutory time frame, issue(s) of imperative public importance is/are at issue, and petition was filed pro se by a relatively uneducated person, I am hereby requesting that the Court not dismiss this Petition for lack of jurisdiction.

The appropriate documents relative to the information enclosed in this memorandum are enclosed for your convenience.

The issue of imperative public importance is whether or not the Attorney General of Indiana should be allowed to make arguments outside of the record in a reply to a Writ of Habeas Corpus Petition.

Respectfully submitted,

/s/ Ira W. Scott
Ira W. Scott
Petitioner, Pro Se
407 Center Street
Valparaiso, IN 46385
Business Phone: (888) 273-4152

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served upon the following counsel of record by first class United States mail, postage prepaid, this 11th day of December, 2000.

/s/ Ira W. Scott
Ira W. Scott, Petitioner, Pro Se

Appendix E

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

December 21, 2000

Before

Hon. William J. Bauer, Circuit Judge
Hon. Richard A. Posner, Circuit Judge
Hon Terence t. Evans, Circuit Judge

IRA W. SCOTT,	) NO. 004084
Petitioner/Appellant ,	) APPEAL FROM THE
	) UNITED STATES
No. 00-4084 vs.	) DISTRICT COURT FOR
	) THE NORTHERN
EDWARD L. COHN,	) DISTRICT OF
COMMISSIONER,	) INDIANA HAMMOND
Respondent/Appellee,	) DIVISION
	) NO. 96 C 1
	) ALLEN SHARP, JUDGE

ORDER

On consideration of appellant's "Jurisdictional Memorandum" filed on December 11, 2000, and review of the short record,

IT IS ORDERED that this appeal is DISMISSED for lack of jurisdiction.

Rule 4(a) of the Federal Rules of Appellate Procedure requires that a notice of appeal in a civil case be filed in the district court within 30 days of the entry of the judgment or motion for rehearing was entered on May 24, 2000, and the notice of appeal was filed on August 22, 2000, about two months late. The district court has not granted an extension of the appeal period, see Rule 4(a) (5), and this court is not empowered to do so, see Fed. R. App. P. 26(b).

Appendix F

The following is concerning Writ of Habeas Corpus which was filed in the United States District Court, Northern District of Indiana, Hammond Division, Ira Scott Petitioner, Attorney General of Indiana, Respondent, Case Number 2:96-CV-0001-AS.

Whether of not the Attorney General of the State of Indiana went outside the record and inaccurately depicted the record to the United States District Appeals Court in the Memorandum in Support of Return to Order to Show Cause.

On Page 4 of the Memorandum, the Attorney General states:

> "The evidence showing that Scott sold unregistered stock in a phone telephone communications company and by promising high-yield returns, free long distance telephone service and an immediate buy-back option to unwary investors who lost a total of $60,000.00 which ended up in Scott's pockets, and the evidence is that Scott stiffed Sprint for $42,067.59 and MCI for $15,000.00 would convince any rational trier of the fact that Scott was guilty beyond a reasonable doubt of theft."

After a diligent search of the record I cannot find where the State showed evidence that I sold unregistered stock in a phony telephone communications company and doing so by promising high-yield returns. I also cannot find anywhere where there was testimony or an immediate buy-back option. Additionally, there is a claim of a loss of a total of $60,000.00 which they are

alleging ended up in my pockets, when, in fact, the State did not show a dollar amount of money that apparently ended up in my pockets and never even attempted to prove where the money went.

There was no evidence presented that apparently I stiffed MCI for $15,000. In fact, there is nothing in writing, there is only, I believe, testimony to that fact that I owed $15,000.00, but no evidence was ever presented.

On Page 6 of its Memorandum, the State says:

> "Although there was evidence that Scott had collected approximately $60,000.00 in investments, Value Plus+ had no assets."

Again the State never showed any dollar amount of paid-in capital to Value Plus+ Communications and also never shoed or attempted to prove whether or not Value Plus+ Communications had any assets.

It also states that from the evidence, the jury could have reasonably inferred that Scott personally received the investment and that the money was spent by him and two other individuals.

Actually, this could not have happened because it was shown clearly that the monies were paid directly to Value Plus+ Communications. Further, it says the long distance service was not authorized to be used by the investors, but it does not name an authorizing authority that makes this determination.

Further on page 6:

> "As previously pointed out, no assets have been accumulated in the business from which to generate dividends and interest."

From my search of the record, I cannot find where the State ever attempted to search for assets or determine that there were no assets from which to generate dividends or interest.

Page 5, the Attorney General states:

> "Upon termination of the Sprint account, Scott then opened an account with Allnet, yet another long distance carrier, thus establishing a pattern whereby Scott would establish long distance telephone services with companies and fail to make payments on the account."

The ground on this last statement or reference to the record is the Allnet account; there was never any evidence of indebtedness shown by Allnet. Also, there was no determination when the account was opened and when it was closed.

Page 4, the Attorney General states:

> "And the evidence that Scott stiffed Sprint for $42,067.59 and MCI for $15,000.00 would convince any rational trier of the fact that Scott was guilty beyond a reasonable doubt."

Using Webster's New Collegiate Dictionary, I have tried to look up the word 'stiffed" and no such word in this

dictionary exists, which leads to the possibility of using unknown verbiage and vernacular in the preparation of a document that would be used to uphold my conviction. I do not know if this is in regard to a fact proven or presumed. Additionally, there is no reference made to a company known as Global Finance Corporation, which is listed on the State's evidence, number 16.

Citing Pinter v. State, (1992), Ind.App., 585 N.E.2d 33, 34.

> "When reviewing appeals asserting insufficient evidence, we neither reweigh the evidence, nor judge the credibility of the witnesses. Instead, we look to the evidence favorable to the verdict, along with any inferences reasonably drawn therefrom. A verdict supported by substantial evidence of probative value will be affirmed."

On Page 5, the Attorney General States:

> "Upon termination of the Sprint account, Scott then opened an account with Allnet, yet another long distance carrier, thus establishing a pattern whereby Scott would establish long distance telephone services with companies and fail to make payments on the account."

The following testimony is by Loren Proctor, Page 317 of the Record, Lines 6 – 21:

Question: As a result of your investigation, the knowledge that you possess, in your opinion, did Ira Scott defraud Sprint?

Answer: Yes.

Question: How did he do that?

Answer: By running up a large bill, which I believe he had no intention of paying because the fact that just prior to opening our account, he had also run up an account with MCI and did not pay them $15,000.00 prior to that. And after our shutting him down in December, he immediately opened up an account with Allnet Communications and I don't know what happened with that, if it was ever paid. So I would say that would be an intent to defraud.

By the State's only witness in this matter, and his own testimony, it does not appear that Loren Proctor had enough information or enough knowledge to know whether or not the Allnet account had been paid and therefore, could not establish the pattern of behavior of opening long distance telephone service accounts and not paying them. Therefore, there is no way for a rational trier of fact to support a conviction on Count 1.

On Page 4, the Attorney General makes reference to "promising high-yield returns and an immediate buy-back option to unwary investors who lost a total of $60,000 which ended up in Scott's pockets."

Record, Page 74, Lines 1 – 25, and Record, Page 75, lines 1 – 2:

Question: So, as a result of your conversations, and incidentally during the period of time that you were talking to Ira, did he indicate anything to you about what you might anticipate and expect in dividends in this investment?

Answer: Not that I can remember.

Question: Do you recall him saying anything to your mother or dad about what they might anticipate as far as dividends on an investment?

Answer: No.

Question: At any time during your conversation, did Ira indicate to you that you could expect a sizable increase in the amount of your investment over a period of time? Did he never tell you that your investment was going to increase in value?

Answer: Yes, he did.

Question: And what did he tell you?

Answer: He didn't give me a figure as dollars and cents, okay, he just said it would be okay.

(This last question and answer were in reference to the Record Page 92, Lines 15 – 25; and Record Page 93, Lines 1 – 9.)

Record, Page 99, Lines 13 – 29:

Question: Mrs. Christia, during your course of your conversation with Ira in May of 1987, did Mr. Scott every represent to you what the financial situation was of the company? Did he ever tell you they had ten dollars or ten thousand or ten million?

Answer: No.

It is therefore apparent from the Record, again the State totally failed to establish the necessary of the elements of the crime of theft as set out in the Record. It is further apparent from the Record that I mad no promises as to the investments that I knew could not or would not be performed. As stated in Kohler v. State, (1990), Ind.App., 556 N.E.2d 936, the Court states as follows:

> "The key to the offense of theft by promising performance that the person knows will not be performed is the intent of the person when he secures control of the property.
>
> In order to meet its burden under this subsection, the State must have proven beyond a reasonable doubt that Kohler knew at the time he procured

the money from his victim that his promises would not be performed."

Further reviewing the record, a question was posted to Mr. Sutherland (Record Page 52, Lines 1 – 9):

Question: And that Mr. Scott told you that in two or three years he would very likely offer to repurchase the stock?

Answer: Yes.

(Record Page 54, Lines 8 – 23)

Question: Mr. Sutherland, in reference to Mr. Douglas' last question, wasn't it true that you indicated to both Mr. Douglas and myself that there were three reasons why you invested in this Value Plus+ Communications? Number one, the possibility of value of the investment, the possibility of a rather sizable return of dividends and free long-distance telephone calls? Wasn't that what you indicated?

Answer: Yes, that was part of it.

Record Page 59, Lines 5 – 16:

Question: Now you have indicated something about 30 or 35 percent that you would be receiving, how were you going to be receiving that?

Answer: Well, he didn't indicate how I would receive that.

Question: Did he use the term 30 to 35 percent dividends?

Answer: Yes.

Record Page 60, Lines 4 - 18:

Question: And getting back to the dividends, Mr. Sutherland, did he indicate to you during what time period of when you could expect this 30 to 35 percent?

Answer: Not to my recollection.

Question: All right. Sometime in the future, is that correct?

Answer: Yes.

Contrary to what is claimed by the Attorney General, after review of the following record, I cannot find where there is any testimony that I promised high-yield returns or immediately buy-back option to unwary investors.

Again, where the Attorney General states that a total of $60,000.00 ended up in Scott's pockets, but, after reviewing the Record, Page 664, according to the State, Lines 14 and 15, it states very clearly the State can't prove that he took the money and put it in his pocket.

The State goes on to say on Lines 16 and 17: "And that's absolutely right, I can't I never said that I could."

This is another example of the rational trier of fact theory that the Attorney General uses to attempt to keep the conviction in force whereas, after reviewing the record, it is either shown to be incorrect or something that has been said or placed outside of the Record.

The following is regarding an Appeal filed in the Third Indiana Court of Appeals:

On Page Three of the Appellee Brief the State makes a claim, Defendant told Mr. Sutherland that there was no way that Mr. Sutherland would lose his money and the Defendant would buy back his stock at any time. (Record, Pages 43, 52 and 55) After reviewing the record on the following pages, I could not find where I said that I would buy the stock back at any time.

Record, Page 52, Lines 5 – 9:

Question: And that Mr. Scott told you that in two or three years he would very likely offer to repurchase the stock?

Answer: Yes.

Page 3, Defendant additionally stated that the stock dividends would amount to thirty to thirty-five (30 or 35%) percent of the investment.

Page 59 of the Record, beginning Line 5:

Question: Now you have indicated something about thirty to thirty-five (30 or 35%) percent that you would be receiving, how were you going to be receiving that?

Answer: Well, he didn't indicate how I would receive that.

On Page 5 of the Appellee Brief, the State contends that neither Mr. Sutherland, Mrs. Christia nor Mrs. Hroma received their investment money from Defendant upon their requests, citing Pages 46, 86, and 139. In reviewing Page 86 of the Record, Line 1 – 5:

Answer: He said that he would give me back my money anytime I wanted it.

Question: You merely would have to ask for it?

Answer: Right.

In the text of the examination on the cited page, it was never determined whether or not Mrs. Christia ever asked for her money back, according to the Record.

Page 46 of the Record, Lines 11 – 24:

Question: Mr. Sutherland, have you in fact lost the entire investment of Five Thousand ($5000.00) Dollars which you made in Value Plus+ Communications?

Answer: As far as I know I have.

Question: And why do you say that?

Strike that question.

Question: And in your opinion, does the stock that you have in Value Plus+ Communications have any value whatsoever?

Answer: Not to my knowledge.

Again, contrary to what the State represents the Record to be in the Appellee Brief, there is no indication whether or not on Page 46 of the Record that Mr. Sutherland ever asked for his money back or not.

Page 139 of the Record, Lines 4 – 10:

Question: And it would be fare to say that you and your husband or you had requested your money back as a result of what you had heard at this meeting on March 10, 1988, would that be fair to say?

Answer: Yes.

Page 5 of the Appellee Brief, Summary of the Argument section, the State claims additionally Defendant exerted unauthorized control over the intended investment money by giving a false impression that Value Plus+ Communications was an ongoing business and investors would get their money back at any time. Additionally, Defendant promised performance which he knew would not be performed when he promised each investor that they would receive dividends or interest payments. The Attorney General does not cite any particular portions of the Record where this information is cited from, although, after a diligent search of the Record I cannot find where I promised each investor that they would receive dividends or interest payments and the assertion that Value Plus+ Communications was not an ongoing business, which is contrary to any evidence that defense

presented at trial and I cannot find where the State attempted to define an ongoing business and prove that the business had not operated.

On Page 9 of the Appellee Brief, it is contended by the State as follows: Defendant opened the account with Sprint in April of 1987 (Record, Page 290). By December 17, 1987, debt on the account reached $42,067.59 (Record, Page 305). In viewing the Record on Page 305, there was testimony to this amount although in the State's Exhibit 16, it shows that the balance in that time period was showing about $4,500.00 discrepancy in the testimony.

On Page 9 of the Appellee Brief: The records for the account indicate several attempts by Sprint representatives to contact Defendant regarding lack of payment. The State's Exhibit 16 does not seem to depict several attempts to contact Defendant regarding lack of payment.

On Pages 9 and 10 of the Appellee Brief: The jury could have reasonably inferred that as a condition of the account with Sprint, Defendant promised performance in the form of making payments on the account. Further, because the account accrued such a large debt over an extended period of time, the Defendant failed to make any payments, the Jury could have reasonable inferred and intended at the time of opening account, not to make any payments. Lastly, shortly before opening the account with Sprint, Defendant accumulated a debt in the amount of $15,000.00 with MCI which he failed to pay (Record, Page 327). In reviewing the test of the record on Page

327, there is the State's witness, Loren Proctor, who is not an employee of MCI, but nevertheless, the State asked on Line 5:

Question: And was that to Global Finance Corp.?

Answer: Yes.

Question: And was that at the same address, 1306 E. Lincolnway?

Answer: Yes.

Question: And was that service terminated immediately prior to the account being made with Sprint?

Answer: Yes.

Question: And do you recall how long that account was in existence?

Answer: To the best of my recollection, it was opened in January, I believe January 17, 1987, and it was canceled in April of 1987.

Question: And again, from you information and investigation were there any payment made on that account?

Answer: According to my contacts with their Security Department, no.

Question: And that was some fifteen-odd-thousand dollars?

From the Record on Page 327, my name was never even mentioned and also there was never any evidence entered that myself, the Defendant, accumulated the debt in the amount of $15,000.00. Other than apparent contact with MCI's Security Department.

In State's Exhibit 16, the documents showed the Global Finance Corporation and do not show the name under Ira Scott under customer information. Also, I would have not been the person making the payments in this matter; all payments would have been made by Global Finance Corporation. Therefore, it is my contention that, if the jury could have reasonably inferred that the Defendant at the time of opening the account not to make any payments would have been technically correct, and if I would have not made any payments to that account personally, which would not be a basis for any criminal intent or mens rea.

Page 10 of the Appellee Brief: Upon termination of the Sprint account, Defendant opened an account with Allnet (Record, Page 330). The only information I can find in the Record, on Page 30, is the first three lines as follows:

Answer: Allnet Communications out of Detroit.

Question: It was opened?

Answer: Yes, sir.

THE STATE: That's all I have. I pass the witness.

A portion of Page 10 of the Appellee Brief reads as follows:

> "This activity established a pattern of behavior wherein Defendant would establish accounts with phone companies and fail to make any payments on the accounts. Defendant's behavior regarding these acts was circumstantial evidence of Defendant's intent not to perform his promise of paying the debts on the Sprint account. The evidence was sufficient to support the Defendant's conviction on Count I, Theft."

In reviewing, contrary to what the State has written, I cannot find in the Record any promise of paying the debts on the Sprint account. Also, the pattern of behavior spoken of, I do not believe exists, because I cannot find anywhere in the evidence or otherwise that I personally had established telephone service, at least with any of the aforementioned companies.

On Page 11 of the Appellee Brief, the Attorney General writes as follows:

> "Detective Staresina discovered that Value Plus+ Communications had no assets. That the Defendant had personally received all of the investment money and that the investment money had been spent by Defendant and two other individuals. (Record, Pages 207-208)"

Contrary to what was written by the Attorney General, the Record on Page 208, Line 15 states:

Question: Did he indicate to whom he had paid it out to?

Answer: He just said it was gone, that he paid it out to for the corporation bills.

In Appellee Brief, Pages 11 and 12, the State writes:

> "Further, Defendant could not repurchase the stock from the individuals, the long distance phone service was not authorized to be used by the investors and the individuals did in fact lose their money in the investment (Record, p. 46, 86, 122, 207–208)."

In reviewing the Record, I cannot find the authorizing body that would authorize who would use long distance telephone service.

Appellee Brief, Page 12:

> "The evidence indicated that the money was not used to further Value Plus+ Communications, but the Defendant and two other individuals spent the money and no assets had been accumulated in the company from which to generate dividends or interest. (Record, Page 207 and 208)."

According to the Record, on Page 208, Lines 15-25, then Detective Staresina was asked by the State on direct examination:

Question: Did he indicate to you whom he paid it out to?

Answer: He just said it was gone, that he paid it out for the corporation bills.

Question: Did he indicate that went to other employees of the company?

Answer: Yes, he mentioned two other employees, two other employees and himself.

Question: Other than himself and two other employees, did he mention any other bills?

Answer: No, he didn't.

Page 208 of the Records, Lines 1-10:

Question: Did you attempt to ascertain whether or not there were any hard assets at all that this company had?

Answer: I tried to ascertain by asking him, and he indicated that there was not any. I had asked him if there was anything, any Treasury Bills or anything that he had taken that money and rolled it into that would be drawing – drawing other interest and he indicated there was not anything.

After searching the Record on Pages 207 and 208, I am not able find how the Attorney General ascertained that there was evidence that indicated the money was not used to further ValuePlus+ Communications and that the Defendant and two other individuals spent the money and that no assets had been accumulated in the company from which to generate dividends and interest. To my

knowledge and understanding that, at least from generally accepted accounting principals, position, dividends and interest are generated from revenues from the operation of a business and assets that are no more than just a portion of the balance sheet equation.

On Page 14 of the Appellee Brief and Page 15, the Attorney General writes:

> "Because the commission of securities or funds cannot be done unknowingly, criminal intent is not an element of a securities defense."

Stated later on Page 15 of the Appellee Brief, the Attorney General states that: "...for the criminal intent for a securities defense is presumed from the acts of the defendant," which differs from the earlier statement of the Attorney General.

Page 11, Appellee Brief, event though the Attorney General claims that Detective Staresina discovered that Value Plus+ Communications had no assets, and that the Defendant had personally received all the investment money ant that the investment money had been spent by the Defendant and two other individuals (Record, Page 207 and 208), the Attorney General has failed to take into consideration contradictory testimony and a deposition transcript of State's witness, Detective Staresina (Page 87, Line 25 through Page 99, Line 6):

Question: Do you know enough abut securities to tell people what a company is and where their assets should be to determine whether a company was in fact in existence and

whether the funds had been used for company purposes or not?

Answer: Well, it's obvious you don't think I'm competent to do this, so I guess I can't."

Despite the State's witness' own admission, he was still allowed to testify on behalf of the State (Pages 207 and 208) and other subsequent pages concerning the operation and financial position of Value Plus+ Communications. Also, this was done without any objection on behalf of the defense counsel.

Page 81, of the deposition, lines 9 – 25:

Question: Did you have enough knowledge at that time?

Answer: I took him at his word, I weighted that on the initial report.

Question: Then why did you tell the people there was no funds available, they were not in securities and CD's, there were no bank deposits, no assets, or any products?

Answer: Because I didn't think there was any and I still don't think there is.

Question: But is that the only way a corporation can hold its assets, is that the only place securities would go?

Answer: Well, I think a corporation does have to have assets otherwise, what's its reason for

existing if it has no assets, there's no equity for the shareholders, what purpose does it have to exist?

To follow the logic of the last answer, a person would have to totally ignore generally accepted accounting principles and the basic fundamentals, where it is totally possible that a company can have many assets and still have no owners' equity, because all the assets are offset by current and long-term liabilities. Therefore, it is my contention that without proper knowledge in this type of an investigation, it could pose an extreme danger to my self and the public in general if left unchecked and allowed to continue in this manner.

A further question is posed, Page 78, Lines 17-25:

Question: What evidence of a crime did you have when you walked in there, other than the fact that you believed, when you have indicated no other information, there was a problem with Mr. Scott had taken the money?

Answer: Well, the statement for one.

Question: Did you – you've indicated in your statement to these people that Mr. Scott was paying his own bills, have you ever reviewed anything on Mr. Scott to see what actually had been paid out of these checking accounts?

Answer: No, I took him at his word.

Question: When he sat down with you, did he present you with the checks and what had been paid and where the funds had been used?

Answer: No, he did not.

Question: Then what word are you referring to, Captain Staresina?

Answer: I'm referring to the statement he gave me in which he indicated that he had taken in X amount of dollars and invested the money from people and had no funds left. He couldn't tell me what he did with the money.

Question: He had no funds, that does not mean the corporation had no funds. You're inferring – are you inferring that everything that was spent on the Value Plus+ Communications was paid on behalf of Mr. Scott's bills?

Answer: Mr. Scott, yes, on behalf of his bills.

Question: Had you reviewed the checking account to see what, how that had been paid our?

Answer: No, I had no way of getting his checking account.

The answer on Lines 10 – 14, there's a reference made to a statement that I had apparently given that indicated I had taken x amount of dollars investment money from people and had no funds left. After a diligent search of the Record and of Defendant's Exhibits Number 2 and 3,

I am not able to find a statement or even and answer to a question that would roughly equate to what was testified to in the deposition.

The grounds and issues will be centered around an appeal by defendant in the Court of Appeals of Indiana, Third District, Decision Memorandum Cause No. 64A03-9303-CR-00098. On Page 7, this said document reads as follows: "Although there was evidence that Scott had collected approximately $60,000 in investments, Value Plus had no assets."

Page 8, a portion reads, "As previously pointed out, no assets had been accumulated in the business from which to generate dividends or interest."

The following will be from the Third Edition, Financial Accounting Book, authored by Walter D. Meigs and Robert F. Meigs. The excerpts from this book, although not the only authority on accounting, will be definitions and generally accepted accounting principals as follows:

> "Assets are economic resources which are owned by a business and are expected to benefit future operations. Assets may have definite physical form such as buildings, machinery or merchandise. On the other hand, some assets exist not in physical or tangible form but in the form of valuable, legal claims or rights. One of the most basic and at the same time most controversial, problems in accounting is the assignment of dollar values to the asset of a business. Two kinds of assets cause little difficulty. Cash and amounts due from customers

represent assets that would either be available for expenditure or will be in the near future (when customers pay their accounts.)" (Page 16)

"The owner's equity in a corporation is called stock holder's equity. The owner's equity in a business represents the resources invested by the owner. Owner's equity is equal to the total assets minus the liabilities. A term retained earnings describes only the earnings which were not paid out in the form of dividends." (Page 19)

"Capital stock in the balance sheet of a corporation represents the amount of money invested by the owners of the business. Total stockholders' equity equals a summation of capital stock and retained earnings." (Page 21)

"The fundamental accounting equation is, assets equal liabilities plus owner's equity or shareholder's equity." (Page 22)

"Alternative form of accounting equation assets minus liabilities equals owner's equity." (Page 23)

"Financial Accounting Standards for Board – An independent group which conducts research in accounting and issues authoritative statements as to proper accounting principles and methods for reporting financial information." (Page 31)

"Going Concern Assumption – An assumption by accounts that a business will continue to operate indefinitely except specific evidence to the

> contrary exists as, for example, impending bankruptcy." (Page 31)
>
> "Liabilities – Debts or obligations of a business that claims of creditors against the assets of a business." (Page 32)
>
> "Revenue is the price of goods sold and services rendered during a given time period." (Page 81)
>
> "Expenses are the cost of goods and services used up in the process of obtaining revenue." (Page 82)
>
> "When we measure the net income earned by a business, we're measuring its economic performance; its economic success or failure as a business enterprise." (Page 95)

Page 8 of the Memorandum Decision:

> "As previously mentioned, no assets had been accumulated from the business in which to generate dividends or interest."

In conjunction with the previously mentioned definitions and generally accepted accounting principles and equations, it would appear that this would not be a correct statement of fact, in stating that no assets had been accumulated to generate dividends, because it is very clear that the assets do not necessarily generate the dividends or interest, it would be the revenues of the company. Also, the assets are on the opposite side of the fundamental accounting equation: Assets = Liabilities + Owners' Equity. And the Decisions Memorandum

mentions assets, but it does not go into any detail about the assets, whether or not they are referring to tangible assets or intangible assets.

As further clarification of the Decision Memorandum's assertion that no assets had been accumulated in the business from which to generate dividends or interest, I will now read from Page 80 of the above-cited accounting authority about retained earnings:

> "The increase in owner's equity resulting from profitable operations is presented in a balance sheet account entitled "Retained Earnings," which appears in the stockholders' equity section of the balance sheet. If a business has sufficient cash, a distribution of profits may be made to the stockholders. Distributions of this nature are termed "Dividends" and decrease total assets and total stockholders' equity. The decrease in stockholders' equity is reflected by a decrease in the retained earnings account, plus the balance of the retained earnings account represents only the earnings which have not been distributed as dividends. Some people mistakenly believe that retained earnings represents a fund of cash available to a corporation. **Retained earnings are not assets, they are an element of the stockholders' equity**. Although the amount of retained earnings indicates the portion of total assets which were financed by earnings and retained net income, it does not indicate the form in which these resources are ***currently held***. The resources generated by retained profits may have been invested in land, buildings, or equipment or

> any kind of asset. The total amount of cash owned by a corporation is shown by the balance sheet in the cash account which appears in the asset section of the balance sheet."

Appellee Brief filed by the Attorney General of Indiana, Page 11, reads in part:

> "Detective Staresina discovered that Value Plus+ Communications had no assets. (R. 207,208)"

Noting also that the referred to Detective Staresina, which name also appears on the probable cause affidavit for the issuance of a warrant and on the charging information, I would like to turn attention now to a deposition taken on December 14, 1989, in this matter. On Page 81 of Deposition of Detective Staresina, Lines 12 – 25:

Question: Then why did you tell the people that there were no funds available, they were not in securities and CD's, there was no bank depots, no assets and no end products?

Answer: Because I didn't think there was any and I still don't think there is.

Question: But is that the only way a corporation could hold its assets, is that the only places that securities would go?

Answer: Well, I think a corporation does have to have assets, otherwise what's the reason for existing? If there's no assets, there's

no equity for the shareholders; what purpose does it have to exist?

On Page 78 and 79 of Deposition of Detective Staresina, Lines 23 – 25:

Question: Did you – you've indicated in your statement to these people that Mr. Scott was paying his own bills with it. Had you reviewed anything on Mr. Scott to see what actually had been paid out of these checking accounts?

Answer: No, I took him at his word.

Question: When he sat down with you, did he present you with the checks and what had been paid, where the funds had been used?

Answer: No, he did not.

On Page 79 of Deposition of Detective Staresina, Line 21:

Question: Had you reviewed the checking account to see what they, how that had been paid out?

Answer: No, I had no way of getting his checking account.

On Page 80 of Deposition of Detective Staresina, Line 25:

Question: Have you asked him for the checking account and ledgers of Value Plus+ Communications?

Answer: I did not.

According to the deposition transcript, especially drawing attention to a portion of the one answer on Page 81, "If it has no assets, there's no equity for the shareholders," is of particular concern because it shows that the investigation could be flawed due to lack of knowledge of generally accepted accounting principles. Again citing the fundamental accounting equation and other matters that were defined in concepts that were previously written from the accounting authority previously mentioned and defined above.

The effect of insufficient training or knowledge in these matters in investigating a crime concerning financial matters could represent a danger to myself and the public, and also may have flawed the investigation to the extent that I could not have had enough accurate testimony to provide me with a fair trial and by the transcript reads, there is no indication that Detective Staresina discovered that Value Plus+ Communications had no assets.

Trial Transcript, Page 208, as previously cited by the Attorney General on Page 11, Lines 1 – 10:

Question: Did you attempt to ascertain whether or not there were any hard assets at all in this company, that this company had?

Answer: I tried to ascertain by asking him, and he indicated that there was not any. I had asked him if there was anything, any Treasury Bills or anything, anything that he had taken that money and rolled it into

that would be drawing – drawing other interest and he indicated there was not anything.

The following testimony could be misleading to the jury because whether or not the company had treasury bills is only a small option for a company as to where position of assets, as can be seen from the authority on accounting that has been quoted in preceding paragraphs.

On Page 3 of the Decision Memorandum, it reads as follows:

> "After an investigation by Sprint, it was discovered that Scott possessed 117 stolen access codes belonging to Sprint and that Value Plus Investors had several of the access codes which were received to Scott through Globe."

The following document contained herein was titled Property Release and Claimed, Valparaiso Police Department, Case No: 88-3147 to page document. In reviewing this document, there is no indication of any stolen codes that were received by the Valparaiso Police Department and/or Loren Proctor in the March 10, 1988 consent search (see Appendix B).

Now, turning attention to the trial record, 528 of the Record, Lines 14 through 25, continuing through Page 529:

Question: Have you at any time ever had any reason to believe that any of the codes that you were dealing with be they either with

investors or with customers that they were stolen?

Answer: Not at all.

The State, represented by Mr. Douglas, interrupts:

The State: Your Honor, if I may, I will object to this line of questioning. There is no allegation. We have not charged this man with selling stolen codes. This is not an issue.

The Court: I'll sustain that objection. I think we've covered. I think I'll sustain some more objections in the past. Mr. Augnst, you have more than indicated, I believe to at least my satisfaction – I assume the jury's, that Mr. Scott hasn't been charged with selling stolen codes, even if they were stolen.

Mr. Augnst, Defense Attorney:

As long as we have that information, your Honor, then I have no problem:

The State: We have not charged him with selling any stolen codes.

Mr. Augnst: And I do understand the Court to say that there's no inference or assumption going to be made to this jury that he ever dealt or possessed stolen codes?

The Court: The Court will make sure that no inference is made from this point and none has been made to this point.

Mr. Augnst: Very good. Then I'll get off that track.

The Court: Thank you.

After a diligent search of the Record, I cannot find where the Court instructed the jury to disregard any testimony that I have ever sold or possessed or purchased what has been referred to as stolen access codes. No such instruction could have prevented myself from having a favorable result in relation to a jury finding a verdict due to the accusation that there was possession of 177 codes apparently found by Loren Proctor during the consent search and also apparently has been used to my detriment in the Decision Memorandum and from the Indiana Appellate Court, Third District, and by the Attorney General in the Appellee Brief in this matter.

According to the Decision Memorandum on Page 3, December 17, 1987,

> "The amount owed on Scott's account with Sprint was $42,067.59. No payments had ever made on the account."

This was contained in the Decision Memorandum even though there was no evidence presented at trial to this effect.

According to the Record on Page 566, requesting beginning Line 18 through 25, Defense Counsel ask myself the following question:

Question: Were there arrangements made at that time or were there any indications made to you as to what arrangements would be made by Sprint for payment of the bill?

The State: Your Honor, that's asking for hearsay. I would object to it.

The Court: I will sustain that objection.

Without the jury being able to hear my answer in this matter, there would be no way to make a determination whether or not there was favorable arrangements for Global Finance to make payments on the phone bill or not.

Page 7 of the Decision Memorandum reads in part:

"Although there was evidence that Scott had collected approximately $60,000 in investments, Value Plus+ had no assets. From the evidence the jury could have reasonable inferred that Scott personally received the investment and that the money was spent by him and two other individuals."

According to the Record, on Page 574, Lines 2 – 6, cross examination of myself, Ira Scott, by Mr. Douglas, Attorney for the State of Indiana, Question Line 2:

Question: In fact, all of those checks, the five thousand, the fifteen hundred, and the

thousand were in fact cashed and paid to Value Plus Communications.

Answer: That's correct.

After a diligent search of the Record, I cannot find any further examination on this matter and it appears to be quite settled that the money was in fact paid to Value Plus+ Communications, Inc. It is also evidenced on the canceled checks that this was also true and did take place. Further evidence supports the State's contention that the money was paid to Value Plus+ Communications is the State's Exhibit No. 2, which shows a check from T.J. Sutherland and Loretta Sutherland, made payable to Value Plus Communications for five thousand dollars and a memo is for "stock" and it is signed by T.J. Sutherland (Record, Page 34.

On Page 80 of the Record, labeled State's Exhibit No. 3, there is a check made payable to Value Plus Communications for fifteen hundred dollars, and the memo is "stock purchase," signed by Debra Christia.

On Page 14 of the Record, labeled State's Exhibit No. 11, a check made payable to Value Plus Communications for a thousand dollars, signed by Lorraine Hroma. The preceding State's Exhibit showing corpus delicti evidence of the checks being made payable to Value Plus Communications does not support the contentions found in the Attorney General's Appellee Brief, and also in the Decision Memorandum of the Indiana Appeals Court, Third District, that the jury could have inferred that Scott personally received the

investment and that the money was spent by him and two other individuals. Additionally, turning the attention to the Return to Order to Show Cause, Cause No. 2496-CV-0001-AS, which you responded as the Attorney General of Indiana, responding to a writ of habeas corpus petitioned by the petitioner, Ira Scott, on Page 4 of the Return to Order to Show Cause, the Attorney General says in part:

"Immediate buy-back option to unwary investors who lost a total of sixty thousand dollars which ended up in Scott's pockets, appears to be outside of the record base on the State's own evidence and the State's own admission in the closing argument on Page 664 of the Record, Lines 14 through 22.

> "The State can't prove that he took the money and put it in his pocket and that's absolutely right. I can't. I never said I could and I don't know that he took a lot of the money and go buy Cadillacs or use it for other things. I don't care. You don't convict somebody because he's a good guy or a bad guy. You do it on what he did or didn't do."

The State's contention Trial Record Page 662, starting Line 15 through 17, "What he found out was by the man's own admission that he had sixty thousand, did not have any assets." On Page 7 of the Appellee Brief in the Court of Appeals of Indiana, Third District, the Attorney General contends, "Although there was evidence that Scott had collected approximately sixty thousand in investments, Value Plus had no assets." Page 4 of the Attorney General's Return to Order to Show Cause in Federal Court, the Attorney General's argument reads in

part, "immediate buy-back option to unwary investors who lost a total of sixty thousand dollars which ended up in Scott's pockets." Although there is no direct testimony to sixty thousand dollars by myself, this information was apparently derived from Pages 207 and 208 of the Trial Record. Reading the Record from Page 207, State's witness, Richard Staresina and State's Attorney, Mr. Douglas, starting with Line 10 through 14:

Question: Now, did you ever ask him to tell you how much money he collected from investors over the period of time?

Answer: Yes, I did. He indicated that he had collected approximately sixty thousand in investments.

Lines 15 through 19:

Question: And did you ask him what Value Plus or what he had to show for that money?

Answer: Yes, I did. I asked him where the money went. He indicated that he paid bills with it.

On Page 7 of the Decision Memorandum of the Court of Appeals of Indiana, Third District, it reads in part as follows:

> "When Scott sought money from each of the investors, he represented that Value Plus was an ongoing business; the investments would have high returns and he would buy back the stock over repay the debenture at any time. The

> investors would not lose their money and part of the investment included free long distance telephone service. However, the representations were false."

Sutherland, Christia, and Lorraine Hroma would testify that they would not have invested the money with Value Plus had Scott not made these representations. Now, referring to the Trial Record and the testimony to these findings of the Appeals Court, the Record reads as follows:

On Page 44, State's Witness, Thomas Sutherland, examined by the State's Attorney starting on Line 21:

Question: Let me ask you another question. Before you purchased this stock, did Mr. Scott, advise you Value Plus Communications did not have any assets?

Answer: No, he didn't.

Question: Did he advise you that Value Plus Communications was, at the time, had not actually purchased any long distance telephone time from any telephone company?

Answer: No, he said they had bought blocks of time.

Question: At the time you purchased the stock, did Mr. Scott tell you that, at the time, Value Plus Communications did not have, in fact,

any customers, that they hadn't sold any telephone time to anyone?

Answer: No, he didn't.

Question: At the time you purchased the stock, did Mr. Scott tell you that Value Plus Communications did not have any employees?

Answer: No, he didn't.

Question: Mr. Sutherland, assuming that any of these representations that I made in my previous questions to you are in fact true, would you have invested back in May of 1987, the five thousand dollars for purchase of stock in Value Plus Communications?

Answer: No, I wouldn't have.

That particular line of questioning was completed on Page 46, Line 10. Continuing on Page 51 of the Record, Lines 20 through 25, to Page 52, Line 9, examination by counsel for the State:

Question: I believe you told Mr. Aungst concerning the profitability of the company or the expected profitability that you and Mr. Scott talked about in a couple of years, the stock should be hopefully worth ample monies?

Answer: Yes.

Question: And that Mr. Scott told you that in two or three years he would be very likely to offer a purchase to repurchase the stock?

Answer: Yes.

Record, Page 53, Line 16 through 25, to Record 54, Lines 1 through 4:

Question: Mr. Sutherland, I apologize, I forgot to ask in my last question, do you have an opinion as to whether you would have made this investment of five thousand dollars had not Mr. Scott guaranteed on use of, in other words, guaranteed to make sure that you wouldn't lose your principal?

Answer: I would say that had a strong bearing on it, after all, we all like a safe investment.

Record, Page 60, Lines 20 – 25 and Record Page 61, Lines 1 through 9:

Question: All right, I believe you further indicated that Mr. Scott indicated to you that there was no way you could lose your five thousand dollars because with them a period of two years you have viewed the stock increased in value two or three times would personally buy the stock. Is that true?

Answer: Right.

Question: And did he use the framework of three years? Is that Correct?

Answer: Yes.

Record, Page 62, Lines 21 through 25, cross-examination by Defense Attorney:

Question: At the time you invested in the company, did you know whether or not they had any employees?

Answer: I didn't know if they did or not.

Record Page 63, Lines 1 through 6:

Question: If you had known at the time that Ira Scott was the only employee of the corporation, would that have influenced your thinking?

Answer: I'm not sure.

Record Page 65, Lines 8 through 16:

Question: Mr. Sutherland, on that time you made the investment in Value Plus, were you aware that this was a relatively new corporation that had just started out??

Answer: That phase but I believe I had an understanding that phase of it was.

Page 65 Line 17 through 25, and Page 66, Lines 1 through 9:

Question: And being a new corporation, I believe and I'm not sure you've indicated this, but being a new corporation you understand that the payment of dividends or the increase in the value of stock, etc., is way down the line, is that true?

Answer: Yes.

Question: In other words, Mr. Scott didn't say, "Look Mr. Sutherland, every month from now you're going to be receiving a thirty to thirty-five percent dividend check." Did he ever tell you that?

Answer: No.

Trial Record Page 91, Lines 4 through 23:

Question: While during that period of time, may I ask what you discussed? What did Ira say? What did you say?

Answer: Want me to go back over what I said to him. We just talked about Value Plus Communications, okay, as being what I would be doing as investing stock and what he would be doing. He would be doing is buying blocks of time from like Sprint, AT&T. I mean he mentioned those and others and invested our money in this and I talked to him about giving him my fifteen hundred dollars. That was a lot of money to me and it was very important that I didn't get ripped off, and if I could have

my money back at any given time, just ask and he said I could have my money back. He didn't say that he would buy back my stock, stock back, or anything like that. He just said I'd get my money back.

Record Page 92, Lines 15 through 25:

Question: So as a result of your conversations and incidentally during the period of time that you were talking to Ira, did he indicate anything to you about what you might anticipate as far as dividends on this investment?

Answer: Not that I can remember.

Question: Do you recall him saying anything to your mother or your dad about what they might anticipate as far as dividends on their investment?

Answer: No.

Record Page 93, Lines 1 through 9:

Question: At any time during the conversations, did Ira indicate to you that you could expect a sizable increase in the amount of your investment over a period of time? Did he ever tell you that your investment was going to increase in value?

Answer: Yes, he did.

Question: And what did he tell you when you could anticipate the possibility of your investment increasing in value? Did he give you a period of time, in months, six months, a year, two years?

Answer: Well, he said that we would be having a stockholder's meeting and I thought that , you know, he was indicating that at that time he would tell us more about how much our money was making.

Record Page 95, Lines 6 through 13:

Question: Did you, in fact, attend a what started out to be a stockholder's meeting on March 10, 0f 1988?

Answer: Yes.

Question: You were there? Now let me ask you. Prior to March 10 or 1988, did you ever ask Ira for your money back?

Answer: No, I did not.

Record Page 101, Lines 3 through 12:

Question: Mrs. Christia, Mr. Douglas asked you if you felt this was a big deal and a big operation. What specifically did Ira Scott tell you that led you to believe that this was a big deal and it was a big operation?

Answer: Well, he – he just made me feel like that. He – he made – he used words like 'company,' you know and that he had two companies and that I knew of other people that had bought stock from him, other than my parents.

Page 127, Record, Lines 18 through 25; continuing to Line 12:

Question: At that time that you made your investment, did Mr. Scott go over with you in any sort of detail, the financial condition of Value Plus Communications with regard to the assets it had or liabilities of the company?

Answer: He just said it was starting our in the this new company and it was Value Plus and that he was – that they were – doing good. He said he had a lot of investments. He said he had a lot of investors and he said the companies were doing real good and getting good percentage. That's why we went into it, because we thought it was something good, you know.

Record Page 132, starting Line 16 continue through Record Page 134, ending on Line 18.

Question: Now, Mrs. Hroma, again Mr. Douglas asked you to assume some things – to assume that Ira Scott was the only employee of Value Plus. And if there were indeed a fact, if it were that indeed a fact,

would you have invested in the corporation of Ira Scott and I believe you said you would not if you knew if you knew he was the only employee? In other words, Ira Scott had come to you that night and gone through all of this and showed you what was going on, etc. There was no discussion about Ira being the only employee of the corporation?

Answer: No.

Question: And you said you trusted Ira Scott, isn't that true?

Answer: Yes.

Question: And Mr. Douglas also asked you to assume that, had you known there were no assets in the corporation, would you have invested and I believe you said, "No"?

Answer: No, I wouldn't have invested with no assets.

Question: But, Mrs. Hroma, when you were there that evening and as you sit here today, you don't know, of your personal knowledge, whether there were any assets in that corporation or not, do you?

Answer: No.

Question: And Mr. Douglas also asked you to assume as a fact that if you had known that Ira

Scott was going to use your investment for his own personal needs, would you have invested in the corporation, and I believe you said you would not have. Isn't that true?

Answer: Yes.

Question: Mrs. Hroma, did you know then and do you know now whether Ira Scott ever used any of this money for his own personal uses?

Answer: I don't know where he used the money.

After reviewing and citing the preceding excerpts from the Trial Transcript, it does not seem to follow the verbiage cited earlier on Page 7 of the Decision Memorandum concerning the Felony Theft charges and may have been used to affirm the judgment of the Trial Court.